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February 14, 2005

VIA MESSENGER

Mr. Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 5634 – Sierra Club

Dear Mr. Jordan:

This letter responds to the complaint filed against the Sierra Club - Florida Chapter in Matter Under Review 5634.¹ Mr. Hamburger apparently enclosed with his complaint copies of four brochures he received from the Sierra Club in 2004. He states that he also enclosed a copy of his letter dated November 9, 2004 to the Sierra Club, but that letter does not appear in the package sent to the Sierra Club in this matter.

With regard to the brochures, Mr. Hamburger incorrectly alleges that “Sierra Club was advocating the election of Senator Kerry to the presidency of the United States in violation of the so-called Campaign Finance Reform Act (McCain Feingold).” It is not clear, and he provides no explanation, how the brochures violate the Bipartisan Campaign Finance Reform Act (BCRA). In addition to prohibiting political parties from raising and spending “soft” money, BCRA prohibited corporations from running electioneering communications during certain periods prior to an election. That provision relates only to broadcast communications and, therefore, could not possibly apply to these written communications. BCRA did not address nonbroadcast lobbying or voter guide communications.

If he is alleging that the Sierra Club’s brochures expressly advocate the election of Senator Kerry, he is similarly incorrect. None of these pieces encourage recipients to vote for or against any candidate. Two of the pieces do not even mention an upcoming

¹As stated in my letter requesting an extension of time to respond to this complaint, the Florida Chapter of the Sierra Club is not a separate corporate entity from the Sierra Club. Therefore, the Sierra Club files this response on behalf of its Florida Chapter.

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election. There is no factual or legal basis for pursuing this complaint and we respectfully request that it be dismissed with no further action.

For decades Sierra Club has advanced its mission to protect the environment through lobbying Members of Congress and the President to strengthen laws and regulations to reduce pollution and protect wild areas. This lobbying may involve visits to policymakers to discuss specific issues, but more frequently Sierra Club reaches out to members of the general public to educate them about the positions of individual lawmakers and to ask them to contact these lawmakers with specific messages. Two examples of these grassroots lobbying pieces are included in Mr. Hamburger's package. The first is a message regarding President Bush's record on air and water pollution with a specific reference to the threat of mercury from power plants. The Sierra Club asks recipients to contact Mr. Bush and tell him "to stand up to corporate polluters." Another piece provides information on Senator Kerry's positions on particular environmental issues and asks the recipient to contact his Senate office to encourage the Senator to continue fighting for legislation and government regulation to remove mercury from the water. Contrary to Mr. Hamburger's allegation, these pieces do not advocate in any manner the election or defeat of any candidate.

The other two pieces are voter guides specifically permitted under the Federal Election Commission's regulations at Section 114.4(c)(5). *See* Explanation and Justification for 11 C.F.R. §114.5, 60 Federal Register 64269, Dec. 14, 1995 ("Revised Section 114.4(c)(5) begins by explaining that voter guides consist of candidates' positions on the campaign issues, and may include biographical information on the candidates. Voter guides are similar to candidate debates in that they include at least two candidates in the same election. However, no particular format is required for either type of voter guide.")

The Sierra Club's guides describe the records and positions of the two Presidential candidates, and in one case the Senate candidates running in Florida, and encourage the recipients to find out more about the candidates before voting. The pieces provide a brief description of the issues and citations to the original sources relied upon regarding the candidates' positions in the event that recipients would like to conduct additional research. Each candidate is credited with his or her positions that, in the view of the Sierra Club, promote or detract from environmental protection. Recipients are left to make their own judgments on the candidates and whose positions they favor.

Based on the forgoing, this complaint should be dismissed immediately with no further action.

Very truly yours,



B. Holly Schadler
Counsel to Respondent

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